

REMARKS

Claims 1-36 are pending in the case. Claims 16-36 were withdrawn from consideration, leaving only claims 1-15 for examination. The Office Action:

- rejected claims 1, 2, 5-15 as anticipated under 35 U.S.C. § 102 (a) by U.S. Application Serial No. 09/752,805 ("Egermeier, *et al.*"), also identified as U.S. Patent Publication No. 2002/0006677; and
- rejected claims 3-4 as obvious under 35 U.S.C. § 103 (a) by Egermeier, *et al.* in combination with U.S. Letters Patent 5,865,900 ("Lee, *et al.*").

Applicant traverses each of the rejections.

All the rejections rely on Egermeier, *et al.*,¹ for teaching "modifying an operational parameter of the fabrication tool responsive to the result of the results of the spectroscopic analysis", recited in claim 1, at lines 8-9. The Office Action cites paragraph 25 of Egermeier, *et al.* as teaching this limitation, which paragraph reads:

[0025] At step 110, a decision is made as to whether the wafer (via the effluent data point) is within the baseline. The requisite comparison is in real-time and generates a signal in the event the analysis indicates contamination of the wafer. In such event, the wafer is rejected from subsequent processing in step 112 (i.e., is withdrawn for reprocessing, such as by being returned to the prior processing operation carried out to remove residual layers). In the absence of a signal indicating contamination, the wafer is forwarded, typically by robotic transfer means, to the next operation in the processing sequence in step 114. The method of the present invention ends at step 116.

¹ Egermeier, *et al.* is not prior art to Applicant's invention. Egermeier, *et al.* is applicable only under the Office's legal fiction that any application filed before the case under examination is prior art under 35 U.S.C. § 102 (e). Applicant may dispel this legal fiction by "swearing behind" Egermeier, *et al.*, but is not required to do so. Applicant chooses at this time to distinguish Egermeier, *et al.*, reserves the right for exercise at a later date, and disputes the Office's categorization of Egermeier, *et al.* as prior art.

This paragraph clearly states that the consequence of the decision making process is the removal from or forwarding to the process system of a contaminated wafer. There is no mention "modifying an operational parameter."

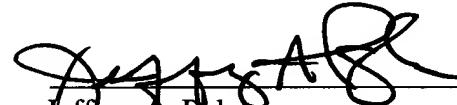
An anticipating reference, by definition, must disclose every limitation of the rejected claim in the same relationship to one another as set forth in the claim. *In re Bond*, 15 U.S.P.Q.2d (BNA) 1566, 1567 (Fed. Cir. 1990). While the test for obvious is different, it requires that each of the limitations of the claim(s) must be taught or suggested by the prior art. Since the art of record fails to teach "modifying an operational parameter of the fabrication tool responsive to the result of the results of the spectroscopic analysis", found in independent claim 1 and, hence, dependent claims 2-14, claims 1-15 are allowable over the art of record.

The Examiner is invited to contact the undersigned attorney at (713) 934-4053 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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